

REMARKS

A. Background

Claims 14-26 are pending. Claims 21 and 24 were objected to because of formalities. Claims 14-21, 25, and 26 were rejected under 35 U.S.C. § 102(b) as being anticipated by Swanson et al (6,113,612). Claims 22-24 were objected to as being dependent upon a rejected base claim.¹ Claim 21 has been amended, claims 22-24 have been canceled, and new claims 27-29 have been added, independent claim 27 being dependent claim 22 rewritten in independent form.² Accordingly, claims 1-21 and 27-29 are presented for reconsideration in view of the above amendments and the following remarks.

B. Objected Claims

Claim 21 has been amended pursuant to the Examiner's suggestions in the Office Action. New dependent claim 29 has been drafted to include the identified correction associated with dependent claim 24. Accordingly, Applicants respectfully request withdrawal of the objection of claim 21.

C. Rejections

Claims 14-21, 25, and 26 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Swanson et al.* *Swanson et al.* was cited as disclosing "a clip or a device including a ring . . . having a resiliently expandable circumference and a plurality of barbed prongs . . . extending at least approximately in the same direction from one edge of the ring" (Office Action, Page 2). Further, it was noted that "[t]he introductory statement of intended use . . . has been carefully considered but deemed not to impose any structural limitations on the claims distinguished over the device of Swanson et al., which is capable of being used as claimed if one desires to do so" (Office Action, Page 3). Applicants respectfully disagree and traverse.

By its title, *Swanson et al.* discloses a "medical anastomosis apparatus." The apparatus is used to make an anastomosis connection which "is a connection which allows body fluid flow

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the claim amendments and new claims can be found throughout the specification and drawings.

between the lumens of two conduits that are connected" (Col. 1, ll.9-12). Inherently, the connector has to ensure that the puncture in the coronary artery, for example. For example, the connector can be expanded using a balloon to "secure the connector and graft to the side wall of conduit 300 [such as the coronary artery], and also helps seal the graft to the conduit" (Col. 7, ll. 59-61. The "radial enlargement of the connector" as taught by *Swanson et al.* "is preferably plastic strain and therefore permanent" (Col. 12, ll. 8-13). This is consistent with the underlying function of *Swanson et al.* in keeping an aperture open to allow blood to flow therethrough.

In contrast, the clip recited in independent claim 1 and the device of independent claim 18 are for "closing a puncture hole in a blood vessel." The preamble provides context for the body of the identified independent claims and distinguishes those identified claims from the cited art, such as *Swanson et al.* (see *Catalina Mktg. Int'l v. Coolsavings.com, Inc.*, 289 F.3d at 808-09, 62 USPQ2d at 1785 ("[R]eliance on the preamble during prosecution to distinguish the claimed invention from the prior art transforms the preamble into a claim limitation because such reliance indicates use of the preamble to define, in part, the claimed invention...")). The function of closing a blood vessel is opposite to maintaining an aperture open during an anastomosis procedure. *Swanson et al.* neither teaches nor suggests "closing a puncture hole in a blood vessel." It would not be reasonable to modify the disclosure and identified use of *Swanson et al.* from a device to maintain an aperture open to one that closes a puncture. These functions and purposes are opposite to one another and would defeat the underlying described purposes and reasoning behind *Swanson et al.*

D. Conclusion

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner

provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 13th day of November, 2007.

Respectfully submitted,

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